

(1949) 04 CAL CK 0014
In the Calcutta High Court
Case No : Civil Rule No. 1638 of 1948

Sm. Rajlakshmi Dassi and Others

APPELLANT

Vs

Banamali Sen and Another

RESPONDENT

Date of Decision : 01-04-1949

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 23, 20, 21

Citation : AIR 1950 Cal 510

Hon'ble Judges : K.C. Das Gupta, J

Bench : Single Bench

Advocate : Bimala Charan Deb and Saroj Kumar Chatterjee, for the Appellant; Binayendra Prosad Bagchi, for the Respondent

Judgement

K.C. Das Gupta, J.—Banamali San and Manamatha Nath Sen, sons of late Bholanath Sen, instituted in the second Court of the Munsif of Sealdah a suit for the declaration of a document of surrender by Rajlakshmi Dasi in favour of her sons as collusive and fraudulent. It is not disputed before me that the deed was executed at a place which is outside the jurisdiction of the Court of the Munsif of Sealdah and within the jurisdiction of the original side of the Calcutta High Court. This was, however, registered at the Sealdah Sub-Registrar's office which is within the jurisdiction of the Court of the Munsiff, Sealdah. It is stated that by this deed the mother surrendered her rights to a large sum of money awarded as compensation on the acquisition of land which was lying in deposit with the President of the Calcutta Improvement Trust Tribunal. It further appears that certain other immovable properties within the jurisdiction of the Sealdah Munsif's Court were also surrendered by this document. The question whether the Court had jurisdiction to try the suit came for consideration of the Court in connection with an application for temporary injunction. The learned Munsif was of opinion that he had no jurisdiction to try the suit as the document had been executed and fraud, if any, practised, outside the limits of his territorial jurisdiction. Accordingly he ordered the plaint to be returned to the learned advocate for presentation before the proper Court.

2. The learned Additional District Judge who heard the appeal from this decision of the learned Munsif did not come to any conclusion himself on the question whether the Munsif had jurisdiction to entertain the suit or not, but being of opinion that the Munsif had not given proper opportunity to the parties and their lawyers to lead evidence and place law before him he set aside the order of the learned Munsif and directed that the learned Munsif would accept the plaint from the plaintiffs and have the suit restored to file and that after that he would proceed with the suit in accordance with law. He directed further that if the parties desired to have the issue of jurisdiction to be heard and decided first, they should be given that opportunity; that the parties would be given opportunities to come ready with evidence and law on the point and that after hearing evidence on the point of jurisdiction and after hearing the learned lawyers of both the parties, the learned Munsif should decide this issue regarding jurisdiction.

3. It is for the revision of this order of the learned Additional District Judge that the present application has been filed.

4. I have no hesitation in coming to the conclusion that the learned Additional District Judge did not deal with the matter in the proper way. It was obviously the duty of the trial Court to come to a decision on the question of jurisdiction as soon as the matter was raised before him and I do not think that the mere fact that a formal issue had not been framed could in any way interfere with the performance of that duty. Nor can I see why the learned Additional District Judge thought it necessary that evidence should be gone into for the decision of the question. Evidence might have been necessary if there had been a dispute as to say, either where the document was executed or where the document was registered or where the fraud was practised or the situation of the properties which were the subject-matter of the deed. There being apparently no dispute on these matters, I think, the learned trial Court acted rightly in proceeding to the decision of the question of jurisdiction at once. If the learned Additional District Judge is right in his opinion that the learned Munsif suddenly called on the parties to argue this question and that they were not ready with what the learned Judge calls "Rulings" on questions of law, that could not certainly justify the learned Additional District Judge himself not deciding the matter. I can find no justification for the appellate Court to send back for the decision of the trial Court a question which is entirely a question of law. As a matter of fact, the learned advocate for the opposite parties has not also tried to justify this course of conduct of the learned Additional District Judge and he thinks that he should have had a decision on the question of jurisdiction in his favour.

5. This would be sufficient ground for interfering with the order of the learned Additional District Judge. In deciding however, what order should be passed in revision I thought it proper to come to a decision for myself on the question whether the learned Munsif was right in his conclusion that he had no jurisdiction to try the suit.

6. It is the common case of both sides that the Sealdah Munsif's Court would have jurisdiction to try the suit only if the cause of action could be said to have arisen wholly or in part within that jurisdiction. I agree with the learned Munsif that part of the cause of action viz., the execution of the document and the practice of fraud arose, on the admitted case of the parties, within the jurisdiction of the Original Side of the High Court of Calcutta and outside the jurisdiction of the Sealdah Munsif's Court. If that was all the Munsif's decision would no doubt be right. There remains, however, the question whether the registration of the deed of surrender should be construed to be a part of the cause of action. I notice that the learned Munsif as well as the Additional District Judge have expressed opinions that it did not matter where the registration took place. I am unable to agree with this opinion. It seems to me clear that if the plaintiffs were to obtain any relief on their case in the plaint, they could not do so without the proof that the document was registered. Unless the deed of surrender was registered it could not be put in evidence, If it could not be put in evidence it would in reality be ineffective against the plaintiffs and the plaintiffs could not be heard to say that their rights have been infringed. The registration of the deed was thus, in my opinion, clearly a fact which if traversed the plaintiffs would have to establish before they could get that relief in the least. I hold, consequently, that the registration of the deed was a part of the cause of action and in as much as the registration admittedly took place in the Sealdah Sub-Registrar's office, it must be held in my Opinion that part of the cause of action in this suit arose within the jurisdiction of the Sealdah Munsif's Court.

7. This, in my opinion, is sufficient for the conclusion that the learned Munsif had territorial jurisdiction to entertain the suit, his pecuniary jurisdiction--a question which has not been raised before me and need not be discussed,

8. A point was also sought to be made by the learned advocate for the opposite parties that even apart from the question of registration the fact that some of the properties which were covered by the deed of surrender were situated within the jurisdiction of the Sealdah Munsif's Court would also give the jurisdiction to try the suit. He has relied on a decision of this Court reported in *Hadjee Ismael Hadjee Hubeed v. Hadjee Mahomed Hadjee Joosub* 21 W. R. 303: (13 Beng. L. R. 91). There was a suit to set aside a release alleged to have been executed in Calcutta under fraudulent representation made by one of the defendants and for an account and administration of the estate of a deceased Mahomedan who died intestate in Bombay where he left moveable and immovable properties. The Court had to consider whether the cause of action could be said to have arisen wholly in Calcutta. Sir Richard Couch C. J. held that the cause of action could not be said to have arisen wholly in Calcutta inasmuch as though the fraudulent representation which led to the execution of the release might have been made in Calcutta and the release might have been executed here, the cause of action included also the effect of the release upon the plaintiff's share of the property and the property being in Bombay this release would have its effect in Bombay and it must be held that the cause of action arose partly in Bombay. This decision

was followed in a case reported in Nittala Achayya v. Nittala Yellamma A. I. R. 1923 Mad. 109 : (72 I. C. 920).

9. It is to be noticed that the ground of the decision that because some properties were situated in Bombay, part of the cause of action could be said to have arisen in Bombay was that the fraudulent document took effect against the plaintiff's interest in Bombay. In the present case, however, I find though the deed of surrender covers not only the properties which were acquired and for which compensation money was lying in deposit with the President of the Calcutta Improvement Trust Tribunal, but also Certain properties which had not been acquired, the plaintiff was only concerned according to his plaint with the effect of this deed on the Compensation money that was lying in deposit with the Calcutta Improvement Trust Tribunal. Clearly, therefore, the fraudulent document took effect against the plaintiffs' interest at the place where the money was lying in deposit i. e. in Calcutta. The principle laid down in the decision relied upon is, therefore, of no assistance to the plaintiffs in this case.

10. As, however, my conclusion as indicated above is that the registration of the document is a part of the cause of action and the registration took place within the jurisdiction of the Sealdah Munsif's Court, the Munsif of that Court had territorial jurisdiction to try this suit and the Munsif's order returning the plaint was wrong. I, therefore, maintain the learned Additional District Judge's order setting aside that part of the Munsif's order and direct that the Munsif should proceed with the trial of the suit in accordance with law. The other part of the Judge's order is set aside.

11. This rule is disposed of in these terms. I make no order as to costs.